



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

February 1, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Alan Avella**  
Tax Registry No. 934431  
Manhattan Court Section  
Disciplinary Case No. 2017-17354

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on October 19, 2017, charged with the following:

**DISCIPLINARY CASE NO. 2017-17354**

1. Said Police Officer Alan Avella, while assigned to the 44 Precinct, on or about and between December 17, 2016 and March 17, 2017, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Avella wrongfully ingested and/or injected anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids, without police or medical necessity, to wit; Drostanolone, Methandrostenolone, Nandrolone and/or Trenbolone. *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**2011 PERSONNAL BUREAU MEMO NO. 44**

**GENERAL REGULATIONS  
ANABOLIC STEROIDS AND  
HUMAN GROWTH HORMONE**

2. Said Police Officer Alan Avella, while assigned to the 44 Precinct, on or about and between December 17, 2016 and March 17, 2017, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Avella wrongfully possessed anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids, without police or medical necessity, to wit; Drostanolone, Methandrostenolone, Nandrolone and/or Trenbolone. *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**2011 PERSONNAL BUREAU MEMO NO. 44**

**GENERAL REGULATIONS  
ANABOLIC STEROIDS AND  
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In a Memorandum dated January 4, 2018, Assistant Deputy Commissioner David S. Weisel found Police Officer Alan Avella Guilty after he pleaded Guilty to both Specifications in Disciplinary Case No. 2017-17354. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues concerning the misconduct for which Police Officer Avella has been found Guilty and deem that separation from the Department is warranted. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for Police Officer Avella at this time.

It is therefore directed that an *immediate* post-trial negotiated agreement be implemented with Police Officer Avella in which he shall immediately file for vested-interest retirement, forfeit thirty (30) suspension days (previously served), forfeit thirty (30) suspension days (to be served), waive all time and leave balances, including terminal leave, waive all suspension days, with and without pay, if any, and be placed on one (1) year dismissal probation.

Such vested-interest retirement shall also include Police Officer Avella's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Police Officer Avella does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.

  
James P. O'Neill  
Police Commissioner





POLICE DEPARTMENT

January 4, 2018

-----X  
In the Matter of the Charges and Specifications

: Case No.

- against -

: 2017-17354

Police Officer Alan Avella

Tax Registry No. 934431

Manhattan Court Section  
-----X

At:

Police Headquarters  
One Police Plaza  
New York, New York 10038

Before:

Honorable David S. Weisel  
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department:

Joshua Kleiman, Esq.  
Department Advocate's Office  
One Police Plaza, 4th Floor  
New York, NY 10038

For the Respondent:

John P. Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

**Charges and Specifications:**

1. Said Police Officer Alan Avella, while assigned to the 44 Precinct, on or about and between December 17, 2016 and March 17, 2017, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Avella wrongfully ingested and/or injected anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids without police or medical necessity, to wit; Drostanolone, Methandrostenolone, Nandrolone and/or Trenbolone. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2011 PERSONNEL BUREAU MEMO NO. 44 – ANABOLIC STEROIDS AND  
HUMAN GROWTH HORMONE

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P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2011 PERSONNEL BUREAU MEMO NO. 44 – ANABOLIC STEROIDS AND  
HUMAN GROWTH HORMONE

**REPORT AND RECOMMENDATION**

The above named member of the Department appeared before the Court on October 19, 2017. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

**DECISION**

After reviewing the evidence presented at the hearing, assessing the credibility of the witness, and Respondent having pleaded Guilty to the charges, the Court finds Respondent Guilty.

**SUMMARY OF EVIDENCE IN MITIGATION**

Respondent testified that he engaged in boxing as a hobby. He had boxed for over 20 years, including in amateur competitions, on some occasions donating prize money to charity. He was a member of a boxing gym in New Jersey. He viewed boxing as a passion, a workout,

and a way for him to be better at defending himself when necessary as a police officer.

Respondent also lifted weights (Tr. 16-17, 31).

Respondent acknowledged that he bought supplements to aid in his workout regimen. He purchased these supplements from "vitamin shops," including GNC, and "legitimate websites" like bodybuilding.com and supplements.com. He noted that he purchased "American products" from "American stores" (Tr. 20).

Respondent was familiar with Personnel Bureau Memo 44 of 2011 ("PBM 44") concerning the use of anabolic steroids. He contended that the products he purchased were not listed as "banned" under the order "in any way," though he conceded that some of the products contained warnings for individuals subject to employer drug testing, indicating that they "may test positive for sports enhancement drugs" and directing users to review their program's drug testing policies. He contended that after he found a product "that looked okay," he asked his integrity control officer "if the products were okay" and received an affirmative response. Respondent also asked a now-retired officer about the products and that individual advised him that it "should be fine." He did not seek guidance from the Medical Division (Tr. 22-24, 32-34, 40-42).

The specific products Respondent acknowledged purchasing were labeled "Stim-Crazy," which he purchased on Amazon and described as a "pre-workout." The other two products, "Tren 75" and "D-Anabol 25" came from a company called "Anabolic Research," and Respondent estimated he paid \$85 for each. The generic names for the products were finabalon and metandesenolone, respectively. Respondent testified that he used Tren 75 to help gain weight and muscle, and D-Anabol 25 to aid in recovery after workouts and "build strength." Respondent conceded that these products bore the words "anabolic" and "tren." PBM 44



specifically warns officers to avoid products with the words “anabolic” and “tren” as they have been found to contain anabolic steroids, prohormones, and aromatase inhibitors (PBM 44, ¶14; Tr. 35-37, 49).

When Respondent was asked, given the names of these products, why he thought they would be permissible, he asserted, “I understand the word anabolic falls into a gray area but it’s the company name. They make many products. . . . I looked into the products. . . . When I asked about them and compared them to the list, the company, the ingredients and the claims that the products claim to do are not on the banned Department Memo 44 list.” Respondent later admitted, however, that while he read the product labels containing the generic names for the product, there were no actual ingredient lists on the labels. Respondent asserted that “with the research he did,” he did not think these products contained or mimicked steroids. He admitted that they were not available at GNC, but contended they could be obtained from “legitimate websites” or “legitimate storefronts,” even The Vitamin Shoppe (Tr. 43-44, 54-55).

Respondent also acknowledged that he had been under treatment for [REDACTED] “on and off” for several years. He received [REDACTED] injections from his primary care physician, [REDACTED]. Respondent denied knowing that the prescriptions he was given were much higher dosages than typically would be prescribed to someone with [REDACTED]. He stated that the office visit was covered by health insurance, but he paid cash for the prescriptions. He was unaware whether those prescriptions would have been covered by his insurance (Tr. 38-39).

Respondent denied that [REDACTED] prescribed him [REDACTED] or [REDACTED]. He conceded that [REDACTED] prescribed him [REDACTED] on two occasions, but it was for [REDACTED]. In 2011, Respondent was given [REDACTED] after having an issue with his shoulder and a “poor reaction” to narcotic medications, including nausea. In 2015,

following surgery on a tendon in his leg and physical therapy, he continued having issues with his leg. Respondent asserted that [REDACTED] did not want to give him narcotic painkillers, again due to potential side effects like nausea, but also constipation and the possible interference with police work. Instead, [REDACTED] again prescribed [REDACTED] which Respondent claimed resolved the issue. Respondent asserted that he ceased use of [REDACTED] in early 2016, but contended that [REDACTED] can be detectable in the body for up to two years. He denied taking [REDACTED] at the time of the drug test here, March 17, 2017. He was taking the supplements mentioned above. Respondent denied that [REDACTED] was an illegitimate prescription for his orthopedic conditions (Tr. 24-25, 46-49).

Respondent acknowledged that he “made a mistake in this situation” in not doing enough “homework” concerning PBM 44 and allowable products. He detailed, “I looked into products that appealed to me that I saw are legal that you can buy in a storefront or from an American website and I asked around. . . . Clearly, the product is in a gray area and the homework as far as contacting the Medical Division . . . wasn’t done. Clearly, and I recently gained this knowledge, these products start off as one thing and they are altered to be something else. Once ingested, they metabolize back into something else and that’s the situation that I’m in now” (Tr. 26-27, 30, 57).

Respondent characterized this incident as a “blemish” on his career and an embarrassment. He testified that he loved being a police officer and helping the public. He believed that he could still be an asset to the Department, especially in the Bronx where he had gotten to know residents and developed a strong relationship with the District Attorney’s Office (see supplemental penalty letters 3, 4 & 7, *infra*). He stated that while he would not make this mistake again, his work ethic would remain strong (Tr. 28-29).



## **PENALTY RECOMMENDATION**

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Court also is in possession of 13 letters and documents from Respondent's colleagues, acquaintances and community concerning his record of service and him as a person.

Respondent pleaded Guilty to the possession and ingestion of four anabolic steroids or anabolic agents, but argues that because his possession and ingestion was fundamentally innocent, in that he obtained the products that caused the positive test results lawfully either through his doctor or legitimate businesses, he should be spared the penalty of termination from the Department.

Respondent acknowledged his mistake in not doing further research but repeatedly referenced that he felt the substances he used fell into a gray area. Even if this Court were to accept that Respondent was misled by a doctor he trusted into believing that the [REDACTED] [REDACTED] injections were consistent with legitimate medical use, Respondent's choices with respect to the supplements he purchased cannot be characterized as innocent. He admitted to ingesting supplements that specifically warned on the label they "may test positive for sports enhancement drugs" and that directed users subject to drug testing to investigate their employer's specific policy.

Moreover, PBM 44 provides that the list of specifically banned substances in Appendix A of the memo did not immunize members as to the use of substances not on the list. "Appendix A does not include every product that contains anabolic steroids, prohormones or aromatase inhibitors that could trigger a positive drug test." Appendix A itself states, in cannot-miss print,



"Just because a product is not on this list **DOES NOT MEAN IT IS SAFE**" (emphasis in original). Moreover, the memo warned, products labeled with code words like "anabolic," "tren," "block estrogen" or "minimizes gyno" had been found to contain anabolic steroids, prohormones or aromatase inhibitors. Thus, the memo warned, members should avoid such products in addition to those specifically listed. See PBM 44, ¶¶ 13-14.

Respondent conceded that he was aware of PBM 44. His statement that he believed "Tren 75" and "D-Anabol 25" did not fall under PBM 44 is not credible as the memo states products containing *those very words* should be avoided. This was not a gray area, it was a big red flag. Respondent should have been keenly aware that the products he purchased could contain anabolic steroids or agents. Given the warning labels that Respondent presented to this tribunal, which he acknowledged reading, his experience in the world of physical fitness and dietary supplements, and the unambiguous language of PBM 44, the Court concludes that Respondent either knew or should have known that the products could contain steroids. Cf. Case No. [REDACTED] (officer's research should have revealed medical and legal concerns about testosterone and human growth hormone; he "turned a blind eye to the many indications that something was not right. . . . To the extent that he did not know . . . it was the result of a very determined and purposeful ignorance.").

Ultimately, despite his genuinely stated commitment to the Department and commendable prior service record, Respondent failed to convince the tribunal that he should be treated differently than other steroid users whose cases resulted in a recommendation of dismissal from the Department.


In *Case No. [REDACTED]* the accused officer's friend and gym trainer injected him with what he told the officer was "deca." The officer supposedly did not know or

attempt to find out what deca was: Deca-Durabolin, a brand name for nandrolone. The trial commissioner found the officer guilty but recommended 60 suspension days and one year dismissal probation as a penalty, rejecting the Advocate's view that steroid use should be treated in accordance with the general policy of termination for illegal controlled substances like marijuana, cocaine or heroin, and citing numerous disciplinary decisions where a member was guilty of ingesting steroids outside the normal course of standard medical care but termination was not imposed [REDACTED]

The Police Commissioner disagreed with the trial commissioner, however. The Commissioner wrote that the officer's "violation of Department policy was egregious and warrants separation from the Department." He ordered that the officer be offered an agreement to file for vested-interest retirement [REDACTED] More recent decisions involving the use of steroids were in accordance with this ruling. See, e.g., Case No. [REDACTED]; Case No. [REDACTED] (vested-interest retirement offered).

It is only the Police Commissioner, and not this tribunal, that can offer a vested-interest retirement agreement in lieu of dismissal from employment, see Administrative Code § 14-115 (a). Therefore, the Court recommends that Respondent be **DISMISSED** from employment with the Department.

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner Trials







POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ALAN AVELLA  
TAX REGISTRY NO. 934431  
DISCIPLINARY CASE NO. 2017-17354

Respondent was appointed to the Department on July 1, 2004. Respondent received 4.5 ratings of "Extremely Competent/Highly Competent" on his annual performance evaluations in 2014, 2015 and 2016. He has received 34 medals for Excellent Police Duty, two medals for Meritorious Police Duty, and one Commendation. [REDACTED]

Respondent has no prior disciplinary history but was suspended and is currently on modified duty status in connection with the above charges. Respondent was placed on Level 2 Discipline Monitoring on June 12, 2017, after receiving the instant Charges and Specifications.

For your consideration.

David S. Weisel  
Assistant Deputy Commissioner Trials